IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR-16-01722

DIRECTOR OF PUBLIC PROSECUTIONS

v

DAMIAN LOW

JUDGE:	HIS HONOUR JUDGE DEAN
WHERE HELD:	Melbourne
DATE OF HEARING:	2 November 2017
DATE OF SENTENCE:	6 November 2017
CASE MAY BE CITED AS:	DPP v Low
MEDIUM NEUTRAL CITATION:	[2017] VCC 1632

REASONS FOR SENTENCE

Subject:

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr M.J. Sharpley	Office of Public Prosecutions
For the Accused	Mr J. Dounias	Altona Legal

HIS HONOUR:

1 Damian John Low, you have pleaded guilty to four charges of obtaining a financial advantage by deception, contrary to s.82(1) of the *Crimes Act* 1958. The maximum penalty for that offence is ten years imprisonment.

2 You have also pleaded guilty to one charge of attempting to obtain a financial advantage by deception, contrary to s.82(1) and s.321M of the *Crimes Act* 1958. The maximum penalty for that offence is five years imprisonment.

3 You pleaded guilty at a committal mention conducted on 5 October 2016, some two years after your offending was detected. Your plea has spared the community and witnesses the cost and burden of a criminal trial, and, I accept that it is evidence of some limited remorse in your case. I have taken your plea into account in your favour in mitigation of sentence.

4 You have no prior convictions, subsequent convictions or outstanding charges.

5 A summary of prosecution opening was read to the court and your offending may be summarised as follows –

6 Between 2009 and October 2014, you were employed as the IT Manager for VC Services Pty Ltd, a service company that provided administration services and support to Vincent Chrisp and Partners Pty Ltd, an architecture firm with offices in Southbank.

7 Between the dates particularised in the charges on the Indictment, you purchased computer equipment and mobile phones for the company without authorisation and that it did not need, and then on sold the equipment to the public. You also used the company credit card to make purchases for personal items and falsified tax invoices submitted to the company for legitimate expenditure in order to obtain equipment, which you also on sold.

Payments were made by the company to a bank account, which was in fact operated by you.

8 Following a request by you in October 2014 for the payment of a false Landmark computers invoice, your offending was discovered. You obtained a total of $163,258.72 from your offending, and attempted to obtain a further $2,549.

9 Following the matter being reported to police and an investigation and audit, you were interviewed by police on 4 June 2015 and falsely stated that your offending was at the direction of a partner in the architecture firm Mr Michael Vincent. You have made no restitution, although VC Services Pty Ltd has recovered $50,000 pursuant to a policy of insurance that it held. I will make a compensation order in relation to the sum of $113,258.72.

10 I have received in evidence four victim impact statements from your employer and fellow workers. I accept that your offending and significant breach of their trust has had a traumatic effect upon them, and it has caused financial losses to your employer at a time when it was experiencing adverse profitability.

11 The sentencing principles applicable in your case are well established. Your offending took place over an extended period and involved planned and systematic dishonesty. You breached the trust your employer placed in you and the trust of your fellow employees. You have offered no credible explanation for your crimes and in my opinion, you have no insight into the seriousness of your offending and have little remorse for the harm you have caused to others.

12 The sentence that I impose must be calculated to deter others from offending in this way, and specific deterrence is also a relevant factor in this case for the reasons that I have already referred to. Your breach of trust and dishonesty

must also be denounced and you must be punished by the sentence that I pass.

13 I accept that the sum of money you appropriated is relatively minor when contrasted with other offending of this type. But you have offered no explanation in relation to the use of the funds by you and I am satisfied that it was used by you for personal expenses or other investments.

14 I also accept that your offending occurred more than three years ago, and you have not reoffended, although the delay in this matter being finalised in this court is in part, attributable to adjournments applied for on your behalf.

15 I now turn to your personal circumstances. You were born in Melbourne on 7 September 1972 and are now aged 45. You enjoyed a stable and supportive upbringing and completed Year 12 at Parade College before joining the workforce and training in information technology. You have a good work history and at the time of sentence, are in full employment, although your current employer is not aware of these charges.

16 You have been married twice and are now in a stable de facto relationship. You have no children. You have no physical health complaints and do not abuse illegal drugs or alcohol, and it would appear you do not gamble.

17 I have received in evidence a psychological report of Mr Jeffrey Cummins, setting out your psychological profile and personal history. It is clear from the contents of that report that you are in a state of denial regarding your crimes. I accept that you are suffering from some anxiety and depression, and this will increase the hardship that imprisonment will cause for you.

18 Your counsel submitted that a Community Correction Order would be an appropriate sentence in this case. But in my opinion, that disposition would not meet the purposes for which this sentence is to be imposed. Furthermore,

any assessment of your prospects for rehabilitation must be approached with caution. You have offered no explanation for your offending and I am not satisfied that you are of low risk of reoffending.

19 As I have observed, specific deterrence is an important factor in this case.

20 Following the completion of the plea hearing on 2 November 2017, your legal representatives sent an email to the court on 5 November 2017 foreshadowing an application for an adjournment to call evidence on your behalf. During the course of that application today, it became clear that the evidence would not assist you in any material way and may in fact reveal that the court was misled during the course of applications for adjournments on 14 February 2017 and 23 June 2017.

21 I also do not accept that you have taken any steps to repay the moneys owing to your employer despite submissions made to the court on those occasions and before me today that you intend to do so. It is plain from the evidence that was led on your behalf that I could not accept that those steps have been taken or seriously contemplated by you.

22 Nevertheless, I have not taken the statements by your counsel that you provided inconsistent instructions to him or the evidence that you have misled your partner, adversely into account in arriving at the sentence to be imposed for the offending before this court.

23 I accept that your offending may properly be described as a course of conduct and accordingly, it is appropriate that there is a significant measure of concurrency between the sentences imposed on the individual charges on the Indictment.

24 In the result, the sentence of the court is as follows –

25 On Charge 1, the charge of obtaining a financial advantage by deception, you are convicted and sentenced to be imprisoned for 12 months.

26 On Charge 2, the charge of obtaining a financial advantage by deception, you are convicted and sentenced to be imprisoned for 3 months.

27 On Charge 3, the charge of obtaining a financial advantage by deception, you are convicted and sentenced to be imprisoned for 12 months.

28 On Charge 4, the charge of obtaining a financial advantage by deception, you are convicted and sentenced to be imprisoned for 3 months.

29 On Charge 5, the charge of attempting to obtain a financial advantage by deception, you are convicted and sentenced to be imprisoned for 1 month.

30 I direct that 6 months of the sentence on Charge 3 be served cumulatively on the sentence on Charge 1.

31 This makes for a total effective term of imprisonment of 18 months.

32 I direct that you serve 9 months imprisonment before becoming eligible for release on parole.

33 But for your plea of guilty, I would have sentenced you to a total effective term of imprisonment of 2 years and 6 months, and order that you serve 18 months before becoming eligible for release on parole.

34 I declare that you have served four days by way of pre-sentence detention, not including today.

35 I will make the ancillary orders sought.

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